

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TONY CAMPBELL,

Plaintiff,

No. CIV S-05-0711 GEB DAD P

vs.

S. SMILEY,

Defendant.

ORDER

_____/

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983 and an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Review of court records reveals that on at least three occasions prior to the filing of this action lawsuits filed by the plaintiff were dismissed on the grounds that they were frivolous or malicious or failed to state a claim upon which relief may be granted.¹ See Order filed June 21, 1999, in Campbell v. Butts, No. CIV F-98-6483 AWI SMS P (E.D. Cal.); Order filed March 27, 2001, in Campbell v. Randolph, No. CIV F-99-5462 REC HGB P (E.D. Cal.); Order filed May 23, 2005, in Campbell v. Turner, No. CIV S-05-0778 FCD DAD P (E.D. Cal.);

¹ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman, 803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 and Order filed May 27, 2005, in Campbell v. Baughman, No. CIV S-05-0066 MCE DAD P
2 (E.D. Cal.). Plaintiff was incarcerated when he brought each of these actions.

3 A prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C.
4 § 1915

5 if the prisoner has, on 3 or more prior occasions, while incarcerated
6 or detained in any facility, brought an action or appeal in a court of
7 the United States that was dismissed on the grounds that it is
8 frivolous, malicious, or fails to state a claim upon which relief may
be granted, unless the prisoner is under imminent danger of serious
physical injury.

9 28 U.S.C. § 1915(g). Plaintiff has not alleged facts that suggest he is under imminent danger of
10 serious physical injury. Thus, plaintiff must pay the filing fee in order to proceed with this case.

11 Accordingly, IT IS ORDERED that:

- 12 1. Plaintiff's April 12, 2005 application to proceed in forma pauperis is denied;
13 2. Plaintiff shall submit, within twenty days from the date of this order, the
14 \$250.00 filing fee for this action; and
15 3. Plaintiff's failure to comply with this order will result in a recommendation
16 that this action be dismissed.

17 DATED: August 17, 2005.

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20 DALE A. DROZD
21 UNITED STATES MAGISTRATE JUDGE

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